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C O N F I D E N T I A L SECTION 1 OF 3 EC BRUSSELS 12155
FOR DEPUTY SECRETARY ROBINSON FROM AMBASSADOR LEARSON
E.O. 11652: XGDS-3

TAGS: PLOS

SUBJECT: LOS: GROUP OF 5 MEETING, PARIS, 6-9 DECEMBER -
FINAL REPORT

REF: PARIS 36373 (NOTAL)

1. SUMMARY AND EVALUATION: GROUP OF 5 COMPLETED 4 DAYS OF
CONSULTATIONS. COMMON POSITIONS WERE ATTAINED OR RECON-
FIRMED ON CERTAIN CRITICAL ISSUES INCLUDING THE SYSTEM OF
DEEP SEABED EXPLOITATION, PRODUCTION CONTROLS AND COUNCIL
VOTING AND THE LEGAL STATUS OF THE ECONOMIC ZONE AND STRAITS.
GROUP TENTATIVELY PLANS TO MEET ON COMMITTEE I MATTERS
FEBRUARY 26/27 PRIOR TO EVENSEN GROUP C-I INTERSESSIONAL
MEETING. VENUE WILL BE SAME AS EVENSEN MEETING, PROBABLY
GENEVA. FRENCH WILL TRANSMIT FINAL REPORTS ASAP. IN
GENERAL, THERE WAS NOTHING NEW IN MEETING. GROUP REMAINS
UNITED ON MOST ISSUES, BUT DID NOT RESOLVE EXISTING DIFFER-
ENCES (MAINLY QUOTAS IN CI, TERRITORIAL SEA POLLUTION
STANDARD SETTING, AND SCIENTIFIC RESEARCH). MORE IM-
PORTANTLY, IT IS CLEAR THAT AGREEMENT ON ACROSS-THE-
BOARD TIGHT POSITIONS ON OUTSTANDING ISSUES IN COM-
MITTEES 1 AND 2 IS VIEWED AS LARGELY TACTICAL. WE
HAVE NO REAL COMMON UNDERSTANDINGS ON BOTTOM-LINE
POSITIONS. ON THE OTHER HAND, (LEAVING ASIDE ABOVE
ISSUES WHERE WE HAVE DIFFERENCES) AT LEAST FOR THE
TIME BEING, WE BELIEVE WE WERE SUCCESSFUL IN HOLDING
OTHERS TO FIRM POSITIONS AND HAVE PROBABLY REDUCED
THE LIKELIHOOD OF THE SOVIETS GOING OFF ON THEIR OWN
TACK. END SUMMARY.

2. COMMITTEE I.

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PAGE 02

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TOR: 111235Z DEC 76

MAIN RESULT OF COMMITTEE I DISCUSSION AT HEADS OF DELEGATION AND EXPERT LEVEL WAS REAFFIRMATION OF PREVIOUS GROUP OF FIVE POSITIONS ON SYSTEM OF EXPLOITATION, PRODUCTION CONTROLS, POWERS AND FUNCTIONS OF THE ASSEMBLY AND COUNCIL AND NEED FOR VERY HARD BARGAINING AHEAD RATHER THAN EARLY COMPROMISE. ONE ACHIEVEMENT OF MEETING WAS THAT ALL DELEGATIONS ARE NOW IN A POSITION TO RAISE NO OBJECTION TO US PROPOSED ARTICLE 27 ON VOTING IN THE COUNCIL. US AMENDMENTS TO MAKE ACCESS SYSTEM MORE AUTOMATIC WERE ALSO APPROVED BY ALL DELEGATIONS. GROUP OF FIVE WAS UNANIMOUS THAT ITS TACTICAL POSITION ON THE SYSTEM OF EXPLOITATION SHOULD INITIALLY BE CONSIDERABLY TOUGHER THAN THE RSNT AND ARE WILLING TO SUPPORT US WORKSHOP PAPER 3 FROM LAST SESSION OF CONFERENCE. USSR WILL OF COURSE MAINTAIN WORKSHOP PAPER 2 ON THE TABLE BUT IS PREPARED TO LIVE WITH WORKSHOP PAPER 3 AND GAVE IT TACIT SUPPORT. ALL DELEGATIONS AGREED THAT THE EVENSEN GROUP MEETING SCHEDULED FOR MARCH SHOULD BE USED AS AN OPPORTUNITY TO CONVINCE THE DEVELOPING COUNTRIES THAT THE PARALLEL SYSTEM IS THE BOTTOM LINE. THE METHOD OF DOING THIS WILL BE TO TAKE TOUGHER POSITIONS THAN THE RSNT AND TO MATCH NEW EXTREME GROUP OF 77 PROPOSALS WITH PROPOSALS OF OUR OWN WHICH ARE EQUALLY HARDLINE. ALL DELEGATIONS WERE IN AGREEMENT, ALTHOUGH THERE WAS SOME SOVIET RESISTANCE, THAT THE SYSTEM OF EXPLOITATION SHOULD BE SETTLED BEFORE GOING ON TO ANY OTHER SUBJECT IN COMMITTEE I. COMMENTS ON SPECIFIC ISSUES FOLLOW:

A) KISSINGER PROPOSALS. USSR INDICATED

OPPOSITION TO ANY SYSTEM OF MANDATORY CONTRIBUTIONS FOR FINANCING THE ENTERPRISE. IT ALSO RESERVED ITS POSITION ON THE REVIEW CLAUSE, EXPLAINING THAT IF WE GET A BAD SYSTEM OF EXPLOITATION IT MAY BE DESIRABLE TO HAVE A REVIEW CLAUSE, BUT IF WE GET A GOOD SYSTEM OF EXPLOITATION THEY WOULD BE OPPOSED TO A REVIEW CLAUSE. THE UK OPPOSED ENTERPRISE FINANCING PROPOSALS "AT THIS TIME" AND STRONGLY OPPOSED THE REVIEW CLAUSE. THE JAPANESE RESERVED THEIR POSITION ON ENTERPRISE FINANCING AND OPPOSED THE REVIEW CLAUSE. THE FRENCH INDICATED NO SUPPORT FOR FINANCING THE ENTERPRISE AND

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PAGE 03-

NC 80808

TOR:111235Z DEC 76

OPPOSED THE REVIEW CLAUSE. FRENCH WERE ANXIOUS TO
EXPLORE ALTERNATIVES TO THE PARALLEL SYSTEM SINCE THEY
OPPOSE THE ENTERPRISE AS WELL.

B) NIGERIAN JOINT VENTURE PROPOSAL. US AND
ALL OTHER DELEGATIONS OPPOSED THE NIGERIAN PROPOSAL.
IT WAS OF COURSE RECOGNIZED IN COURSE OF GROUP DIS-
CUSSION THAT IF WE COULD SUCCESSFULLY NEGOTIATE A
SINGLE SYSTEM OF LICENSES WHICH AS A MATTER OF COS-
METICS WAS DENOMINATED AS A "CONTRACTUAL JOINT VENTURE
SYSTEM" THAT WOULD BE ACCEPTABLE.

C) PARALLEL SYSTEM. US, UK AND USSR MADE
CLEAR THAT ITS OBJECTIVE WAS PARALLEL SYSTEM WITH
GUARANTEED ACCESS. FRENCH AND JAPANESE DELEGATIONS
ATTACHED SAME IMPORTANCE TO GUARANTEED ACCESS
BUT INDICATED MORE FLEXIBLE APPROACH TO MODALITIES.

D) QUOTA SYSTEM. NO DELEGATION CHANGED ITS
POSITION ON THE QUOTA SYSTEM. US TOOK TOUGH STAND
AND INDICATED DOUBTS AS TO RATIFICATION OF CONVENTION
IF QUOTA SYSTEM INCLUDED. THIS, WE POINTED OUT, WOULD
NOT SERVE THE INTERESTS OF THE GROUP OF FIVE BUT WAS
INEVITABLE IF OTHERS INSISTED ON QUOTA PROVISIONS.
UK AND JAPAN URGED THAT COMPROMISE BE FOUND SO GROUP OF
FIVE COULD BE UNIFIED AGAINST COMMON OPPONENTS. FRENCH
DEL EXPRESSED VIEW THAT GROUP OF 77 WOULD NEVER ACCEPT
CONVENTION WITHOUT QUOTA SYSTEM.

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PAGE 01

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C O N F I D E N T I A L SECTION 2 OF 3 EC BRUSSELS 12155
E) FINANCIAL ARRANGEMENTS (PROFIT SHARING).

ALL DELS PREFERRED APPROACH A, ALTHOUGH US
RAISED QUESTIONS ABOUT IT WHICH REQUIRE FURTHER
STUDY. UK WOULD PREFER PROFIT SHARING BASED
ON VALUE OF RAW NODULES RATHER THAN FIRST MANUFACTURED
PRODUCT. WHILE US NOTED THAT THIS COULD BE DANGEROUS
SINCE NODULES HAVE NO MARKET VALUE AND IT WOULD BE
NECESSARY TO GIVE AUTHORITY GREAT DISCRETION TO ESTAB-
LISH AND REVISE A POSTED PRICE IN ORDER TO COMPUTE ITS
SHARE OF THE PROFITS. WE STATED IN HEADS OF DELEGATION
MEETING THAT QUESTION OF VALUE FOR PROFIT-SHARING
PURPOSES NEEDED FURTHER STUDY. FRANCE SUPPORTED
BASIC VALUE ON FIRST MANUFACTURED PRODUCT. THE USSR
WAS SILENT AND THE JAPANESE SEEMED FLEXIBLE.

F) STATUTE OF ENTERPRISE. ALL AGREED WITH
US VIEW THAT STATUTE OF ENTERPRISE WOULD NOT ATTRACT
CAPITAL AND THEREFORE SHOULD BE IMPROVED. SOME ARGUED,
HOWEVER, THAT IF WE OBTAIN GUARANTEED ACCESS IN PARALLEL
SYSTEM WE NEED NOT WORRY ABOUT AN ENTERPRISE WHICH DOES
NOT FUNCTION.

G) DISPUTE SETTLEMENT. NO TIME WAS AVAILABLE
TO DISCUSS THIS ISSUE IN COMMITTEE I CONTEXT.

DURING THE COURSE OF THE HEADS OF DELEGATION
DISCUSSION THE US SUBMITTED A PAPER LISTING MAIN CRI-
TERIA WHICH HEADS OF DELEGATION SHOULD TAKE INTO
ACCOUNT IN EVALUATING ANY PROPOSALS ON GUARANTEED
ACCESS. THIS PAPER WAS ACCEPTED EXCEPT FOR MINOR
REVISIONS AND WILL BE ATTACHED TO THE REPORT OF THE
GROUP OF FIVE. IN ADDITION, US AT THE REQUEST OF THE
HEADS OF DELEGATION SUBMITTED A PAPER COMPARING WORK-

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PAGE 05

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TOR:111255Z DEC 76

SHOP PAPER 3 AND THE SIMILAR PROVISIONS OF THE RSNT.

3. COMMITTEES II AND III

THE EXPERTS AND SUBSEQUENTLY THE HEADS OF DELEGATION CONSIDERED THE QUESTION AND AGREED ON STRATEGY TO BE PURSUED DURING INTERSESSIONAL PERIOD ON THE LEGAL STATUS OF THE ECONOMIC ZONE AND STRAITS. BECAUSE OF THE LACK OF TIME MARINE SCIENTIFIC REASEARCH WAS NOT DISCUSSED AS SUCH IN ANY DEPTH, BUT US HAD ADEQUATE OPPORTUNITY TO SHOW OUR

FIRMNESS ON ISSUE IN COURSE DISCUSSION OF STATUS OF ECONOMIC ZONE AND SIPUTE SETTLEMENT.

A. THE LEGAL STATUS OF THE ECONOMIC ZONE

THE GROUP OF FIVE AGREED THAT THEY WOULD ADVOCATE DURING THE INTERSESSIONAL PERIOD, WITH EQUAL FIRMNESS, AN AGREED ARTICLE 44 WITH TWO EXCEPTIONS DISCUSSED BELOW, THE UAE PROPOSED AMENDMENT TO ARTICLE 46 PLUS AN AGREED GROUP OF 5 AMENDMENT TO PARAGRAPH 3 OF THAT ARTICLE, AND THE AUSTRALIAN FORMULA REGARDING THE HIGH SEAS STATUS OF THE ECONOMIC ZONE (ARTICLE 75). JAPAN RESERVED ON ARTICLE 44 WHICH MUST BE FURTHER CONSIDERED IN TOKYO. THEY WILL CONVERY THEIR POSITION ON THAT ARTICLE WHEN THEIR REVIEW IS COMPLETED. THEIR PROBLEM IN THE MAIN GOES TO THE QUESTION OF WHETHER THE SOVEREIGN RIGHTS OF THE COASTAL STATE REGARDING LIVING RESOURCES SHOULD BE QUALIFIED BY THE PHRASE "AS PROVIDED FOR IN THE PRESENT CONVENTION" AS THEY WOULD LIKE OR WHETHER THAT QUALIFYING PHRASE SHOULD BE OMITTED WHICH IS CERTAINLY THE VIEW OF MOST COASTAL DEVELOPING COUNTRIES AND IS A VIEW ACCEPTABLE TO ALL OF THE OTHER MEMBERS OF THE GROUP OF 5. THE SOVIET UNION INSISTED THAT THE WORD "EXCLUSIVE" QUALIFY THE JURISDICTION GRANTED TO THE COASTAL STATE WITH REGARD TO MARINE SCIENTIFIC RESEARCH. THE SOVIETS WILL PRESS ARTICLE 44 WITHE WORD EXCLUSIVE INCLUDED WHILE THE OTHERS WILL PRESS THE ARTICLE WITH THE WORD DELETED.

B. STRAITS.

THE GROUP OF 5 AGREED THAT THERE SHOULD BE NO CONSULTATION OR NEGOTIATING GROUP ON STRAITS AT THE NEXT SESSION OF THE LOS CONFERENCE; THAT THERE SHOULD

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PAGE 06

NC 80848

TOR:111255Z DEC 76

BE NO SUBSTANTIVE CHANGE TO THE STRAITS ARTICLES; AND
THAT THE POSSIBILITY OF COSMETIC CHANGES TO THE STRAITS
ARTICLES WILL BE EXPLORED BY EACH DELEGATION BUT
WOULD NOT BE PRESENTED TO OTHER STATES UNLESS THOSE
CHANGES WERE AGREED TO BY ALL MEMBERS OF THE GROUP OF

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PAGE 07

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C O N F I D E N T I A L SECTION 3 OF 3 EC BRUSSELS 12155

FOR DEPUTY SECRETARY ROBINSON FROM AMBASSADOR LEARSON
5. A REVIEW ON STRAITS INDICATED, AS WE ALREADY KNEW,
THAT THE JAPANESE ARE PARTICULARLY CONCERNED THAT THERE
BE NO CHANGES TO THE STRAITS ARTICLES. THEY WILL TRY
VERY HARD TO REACH AGREEMENT WITH MALAYSIA TO SOLVE HER
PROBLEMS OUTSIDE OF THE LOS CONTEXT. IF THEY ARE
SUCCESSFUL, IN THE JAPANESE VIEW, MALAYSIA SHOULD BE
SATISFIED BUT MALAYSIA WILL NOT BE SATISFIED IF THERE
ARE ONLY COSMETIC CHANGES IN LOS. IF THE JAPANESE
NEGOTIATIONS WITH MALAYSIA ARE NOT SUCCESSFUL,
JAPAN WILL RECONSIDER HER POSITION. THE JAPANESE
WERE QUITE OPEN IN STATING THAT THEY HAVE VERY GREAT
DOMESTIC PRESSURE TO MODIFY THE STRAITS ARTICLES WHICH
IS RELATED TO THE THREE NUCLEAR PRINCIPLES. THEY SAY
THEY HAVE RESISTED THIS PRESSURE BUT THAT IF REFER-
ENCES TO UNDER KEEL CLEARANCES ARE INCLUDED IN THE
LOS TEXT, THEY WILL PRESS FOR SUBMARINES TO NAVIGATE
ON THE SURFACE IN THE TERRITORIAL SEA AND STRAITS.
THE JAPANESE STATED THAT THEY WERE ABLE TO WITHSTAND
THE PRESSURE SO FAR BY INDICATING THAT THE STRAITS
ARTICLES WERE AGREED UPON. A REVIEW OF UNDER KEEL
CLEARANCE QUESTION AS SUGGESTED IN THE MALAYSIAN AMEND-
MENTS INDICATED SYMPATHY BY USSR. HOWEVER, WHEN SOVIETS
WERE APPRISED OF DEPTH AND NATURE OF JAPANESE CONCERN, THEY
ACCEPTED AGREEMENT ABOVE. ALL DELEGATIONS AGREED THAT
THE MALAYSIAN AMENDMENT REGARDING COMPULSORY INSURANCE
SHOULD NOT BE INCLUDED IN A LAW OF THE SEA TREATY BE-
CAUSE IT WAS INAPPROPRIATE; LDCS TRYING TO BUILD UP A
FLEET WOULD BE OPPOSED; NO UNILATERAL REGULATION BY A

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COASTA STATE COULD BE ACCEPTED IN THIS REGARD; AND TO THE EXTENT A GENERAL PRACTICE EMERGED ON INTERNATIONAL CIVIL LIABILITY STRAITS STATES WOULD BE PROTECTED. THE BRITISH BELIEVE THAT MAY OF THE MALAYSIAN AMENDMENTS WHICH HAVE BEEN EXAMINED WERE CLEARLY COSMETIC IN CHARACTER AND SHOULD NOT BE DISMISSED OUT OF HAND. THE SOVIET UNION REFERRED TO AMENDMENTS TO THE STRAITS ARTICLES PUT FORWARD BY TURKEY, THE ARAB STATES AND SPAIN WHICH THEY THOUGHT MIGHT BE USEFULLY STUDIED. WE INDICATED THAT WE SHOULD NOT GO BEYOND TRYING TO SATISFY THE MALAYSIANS IN SOME COSMETIC WAY LEST WE INADVERTENTLY OPENED THE BASIC STRAITS ARTICLES TO REVIEW. WE HAVE AGREED TO MEET WITH UK IN JANUARY TO TRY TO AGREE ON THOSE AMENDMENTS WHICH ARE COSMETIC AND THEN, THROUGH DIPLOMATIC CHANNELS, TO SEEK GROUP OF 5 AGREEMENT BEFORE DISCUSSIONS WITH MALAYSIANS. AGREEMENT TO BILATERAL CONSULTATION WAS PROBABLY KEY TO BRITISH WILLINGNESS TO PARTICIPATE IN GROUP CONSENSUS ON ISSUE.

C. SCIENTIFIC RESEARCH.

BECAUSE OF THE PROTRACTED DISCUSSION ON THE ECONOMIC ZONE AND STRAITS, SCIENTIFIC RESEARCH AS SUCH WAS NOT CONSIDERED IN DETAIL. HOWEVER, IN CONSIDERING ARTICLE 44 THE SOVIETS INSISTENCE UPON INCLUDING THE WORD EXCLUSIVE BEFORE JURISDICTION WITH REGARD TO SCIENTIFIC RESEARCH AND OTHER COMMENTS ON EXCLUDING RESEARCH FROM DISPUTE SETTLEMENT RECONFIRM THE VERY COASTAL ORIENTATION THAT THEY HAVE TAKEN. WHILE OUR POSITIONS AND PRIVATE DISCUSSION CONFIRMED OUR OWN DETERMINATION ON ISSUE. REST OF GROUP SUPPORTED US.

D. COASTAL STATE COMPETENCE TO SET VESSEL SOURCE POLLUTION STANDARDS IN THE TERRITORIAL SEAS.

US POSITION IN FAVOR OF COMPETENCE OVER CONSTRUCTION, DESIGN, EQUIPMENT AND MANNING STANDARDS OPPOSED BY OTHERS. JAPANESE, UK AND PERHAPS FRENCH SEEM WILLING TO COMPROMISE TO GREATER OR LESSER EXTENT. COMPROMISE ACCEPTABLE TO US WAS NOT REACHED THIS WEEK BUT UK WANTS BILATERALS BEFORE NEXT GROUP OF FIVE

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PAGE 09 - 09

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MEETING.

4. COMPULSORY SETTLEMENT OF DISPUTES.

THERE WAS ONLY A VERY GENERAL DISCUSSION OF THIS SUBJECT, THE GROUP HOWEVER DID MAKE SOME PRELIMINARY COMMENTS ON THE PRESIDENT OF THE CONFERENCE'S NEW REVISION ON DISPUTE SETTLEMENT WHICH HAS NOT YET BEEN FORMALLY DISTRIBUTED BY THE UN SECRETARIAT. ALL STATES AGREED THAT THE TEXT WAS AN IMPORTANT IMPROVEMENT OVER THE PREVIOUS VERSION ALTHOUGH ADDITIONAL AMENDMENTS ARE REQUIRED. ALL STATES AGREED THAT THE NEW PROVISIONS REGARDING ARBITRATION AS THE ULTIMATE FORA WAS A MORE ACCEPTABLE SOLUTION (THE DEFENDANT CHOOSES THE FORUM IN WHICH HE AGREES TO BE SUED, BUT THE PLAINTIFF CAN ALWAYS INSIST ON ARBITRATION). THE SOVIET UNION WAS PARTICULARLY CONCERNED THAT THE SEABED CHAMBER OF THE LOS TRIBUNAL WOULD GET INVOLVED IN DISPUTES INVOLVING SUPERJACENT WATERS. WHILE THEY COULD ACCEPT A SEPARATE SEABED TRIBUNAL, THIS CHAMBER SOLUTION RAISES QUESTIONS ABOUT THE ACCEPTABILITY OF SEABEDS DISPUTE SETTLEMENT BY THE USSR. THE US AGREED THAT PERHAPS THIS PROVISION NEEDED FURTHER NEGOTIATION. THE USSR AND THE US AGREED THAT THE INCLUSION OF FISHERIES DISPUTES ALBEIT IN RATHER UNCLEAR LANGUAGE WAS AN IMPROVEMENT OVER THE PREVIOUS TEXT. THE SOVIETS AND FRENCH CONTINUED THEIR STRONG OPPOSITION TO THE LOS TRIBUNAL GENERALLY AND TO PROVISIONS IN THE ARBITRATION SECTION WHICH GIVE STATUS TO THAT TRIBUNAL. THE SOVIETS RESERVED ON THE APPLICABILITY OF DISPUTE SETTLEMENT TO SCIENTIFIC RESEARCH WHICH MAY DEPEND ON THE SUBSTANTIVE RESEARCH ARTICLES. THE JAPANESE WERE PARTICULARLY CONCERNED ABOUT THE APPLICABILITY OF DISPUTE SETTLEMENT TO FISHERY MATTERS WHICH NEEDS FURTHER STUDY. THE GROUP WILL HAVE A FULLER DISCUSSION AT A FUTURE MEETING.

5. FOR PARIS: AMBASSADOR LEARSON WOULD LIKE TO EXPRESS APPRECIATION FOR EXCELLENT SUPPORT PROVIDED BY EMBASSY, ESPECIALLY BY MR. LUMSTEN.

6. FOR LONDON. AMBASSADOR LEARSON WOULD LIKE TO EXPRESS APPRECIATION FOR EXCELLENT SUPPORT PROVIDED BY MS. UDALL. HINTON

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